



HOTEL QUARANTINE (BUSINESS LOSSES) CLASS ACTION
5 BOROUGHES NY PTY LTD (ACN 632 508 304) v STATE OF VICTORIA & ORS

UPDATED CLASS ACTION SUMMARY STATEMENT

Case: S ECI 2020 03402

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1. What is a class action?

A class action is a legal proceeding commenced by a 'lead' or 'representative' plaintiff against one or more defendants, seeking to obtain a legal remedy such as compensation. The lead plaintiff brings the claim on their own behalf and on behalf of other claimants who have claims against the defendant(s) arising from similar or related circumstances. The other claimants that are represented by the lead plaintiff in the class action are known as 'group members'. In a class action, the lead plaintiff's claim is used to resolve legal and factual issues that are common to group members' claims. This allows those common issues to be considered and resolved once in a way that will apply to the claims of all group members affected by that issue, rather than needing to be determined individually for each group member.

2. Whom is the Hotel Quarantine (Business Losses) Class Action against, and what is the claim for?

The Hotel Quarantine (Business Losses) Class Action seeks compensation for loss suffered by businesses alleged to have been caused by negligence in relation to the hotel quarantine program in Victoria. The plaintiff is seeking compensation from the State of Victoria, which is the first defendant to the proceeding. The other defendants to the proceeding are:

- (a) the Honourable Jenny Mikakos (in her capacity as the former Minister for Health and the former Minister for the Coordination of Health and Human Services: Covid-19) (**second defendant**);
- (b) the Honourable Martin Pakula (in his capacity as the former Minister for Jobs, Innovation and Trade and the former Minister for the Coordination of Jobs, Precincts and Regions: Covid-19) (**third defendant**);
- (c) Kym Lee-Anne Peake (in her capacity as the former Secretary, Department of Health and Human Services) (**fourth defendant**); and
- (d) Simon Grant Phemister (in his capacity as the Secretary, Department of Jobs, Precincts and Regions) (**fifth defendant**).

The plaintiff alleges that these Ministers and Secretaries were negligent in their actions and/or failures to act concerning the hotel quarantine program. The plaintiff also alleges that the State of Victoria is vicariously liable for the negligence of the Ministers and Secretaries referred to above. The class action is brought on behalf of the plaintiff and the group members identified below.

3. Who is a group member in the Hotel Quarantine (Business Losses) Class Action?

You are a group member if:

- (a) as at 1 July 2020 you carried on a business involving the supply of goods or services to members of the general public from one or more premises physically located within Victoria;
- (b) your ability to supply goods or members of the general public from those premises was adversely affected by one or more of:

- i the “stage 3” restrictions out in place in certain postcodes of Melbourne from 2 July 2020, and in Melbourne and the Mitchell Shire local government area from 9 July 2020;
 - ii the “stage 4” restrictions put in place in Melbourne from 2 August 2020, including the workplace closures put in place from 6 August 2020; and
 - iii the regional “stage 3” restrictions put in place in Victoria outside of Melbourne from 6 August 2020; and
 - (c) you have suffered economic loss by reason of one or more of the above-mentioned matters.
- 4. Who is the law firm acting for the plaintiff?**
- Quinn Emanuel Urquhart & Sullivan, LLP (**Quinn Emanuel**).
- 5. What is the role and responsibility of the plaintiff?**
- The plaintiff is the representative for the class and will provide instructions to Quinn Emanuel regarding the conduct of the case and may give evidence during the proceeding. In hearing the plaintiff’s case, the Court will be asked to make findings in relation to questions of fact and/or law that are common to group members. In this case the plaintiff is 5 Boroughs NY Pty Ltd (ACN 632 508 304).
- 6. How is the Hotel Quarantine (Business Losses) Class Action funded?**
- Quinn Emanuel is acting on the basis that its fees will not be payable until and unless there is a successful resolution of the class action, by Court approved settlement or judgment. From August 2020 to June 2025, Quinn Emanuel had a portfolio finance arrangement in place with Regency V Funding Pty Ltd (**Financier**) for disbursements, such as barristers’ fees, expert witness fees, and court fees for this class action. . This arrangement has now concluded. Henceforth, Quinn Emanuel will cover all costs. Group members are not required to pay any money up-front to be involved in the case or to receive any compensation that they may become entitled to from it.
- 7. How are legal fees and disbursements charged?**
- The plaintiff’s legal fees and disbursements are ‘conditional’, meaning that they are only recoverable by Quinn Emanuel if there is a successful outcome. On 23 November 2023, Justice Keogh made a Group Costs Order (**GCO**) in the proceeding at a rate of 30% inclusive of GST. The effect of the GCO is that, if the case is successful – meaning that there is a settlement or the case succeeds at trial and damages are awarded by the Court – then, subject to further order, the legal and disbursement costs payable to Quinn Emanuel will be calculated as 30% of any settlement sum or damages award. This will be shared among the plaintiff and all group members. If there is not a successful outcome in this class action, group members cannot be pursued for costs by the defendants as the *Supreme Court Act* prohibits orders for costs against group members.
- 8. Are there any other class actions that relate to the Hotel Quarantine Program?**
- The Hotel Quarantine (Business Losses) Class Action is the only class action in Australia that has been commenced against the named defendants in respect of the Hotel Quarantine Program.
- 9. Where can group members obtain further information about the case?**
- For further information about the Hotel Quarantine (Business Losses) Class Action, group members may contact Quinn Emanuel by email at, HQclassaction@quinnemanuel.com; or by phone, (02) 9146 3500. Group members will not be charged for any such enquiries.